IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No.43786-M of 2006

Date of Decision: May 16, 2007

Sanjeev Shankar Rai

Petitioner

VERSUS

State of Haryana and others

Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Kapil Aggarwal, Advocate,
for the petitioner.

Mr.Yashwinder Singh, AAG, Haryana.

Mr.Neeraj Kumar, Advocate.

**

RANJIT SINGH J.

Prayer made in the present petition is for quashing of the FIR No.747 dated 15.12.2005 and challan on the ground that the

proceedings in progress, against the petitioner, are illegal and bad in law and would amount to abuse of process of law.

Sunil Rai married with Sonia (respondent No.2) on 16.11.2003. They have a son, out of this wedlock, born on 2.10.2004. Differences arose between the married couple which flared up leading to registration of the cases against each other by respective families. The present FIR was got registered by respondent No.2 against her husband and other family members including the petitioner, making allegation for an offence under Sections 498-A, 405, 406, 323, 506, 34 IPC. On completion of investigation, challan has been presented. The petitioner, who is brother-in-law of the complainant, has filed this petition seeking quashing of the FIR and the challan qua him.

The petitioner states that he is married and working as Sub Divisional Officer with present posting at Adampur, District Hisar. He points out that the matrimonial house of his brother is at Panchkula, whereas the petitioner is posted in Dakshin Haryana Bijli Vitran Nigam Limited having offices at the distance of about 200 K.M. from Panchkula. He would thus claim that he always was living separately on account of his posting and as such would have nothing to do with the matrimonial dispute of his brother and respondent No.2. It is also mentioned that his brother Sunil Rai is working as a lecturer at Ambala and thus is living in a separate accommodation. Giving the background of this matrimonial dispute, it is stated that

respondent No.2 could not adjust with her husband and was in the habit of calling her parents on minor issues. It is disclosed that she was taken by her father on 10.8.2005 along with all gold ornaments and clothes. On 11.9.2005, respondent No.2 accompanied by her father and brother statedly came to the parental house of the petitioner at Panchkula and abused and assaulted parents of the petitioner and thus caused them injuries. The whole house was ransacked and the goods were damaged. Still father of respondent No.2 recorded a DDR at Police Post, Sector 21, Panchkula, which was later compromised when the complainant family agreed to pay a sum of Rs.20,000/- for the damage caused. This compromise failed and father of the petitioner lodged FIR on 16.11.2005 at Police Station Sector 5, Panchkula against respondent No.2 and her parents. It is claimed that as a counter blast to this, the present FIR was lodged by the respondent on 15.12.2005 . Having given this background the petitioner has prayed for quashing of this FIR qua him on various counts. It is urged that no cause of action has arisen at Rohtak for respondent No.2 to lodge the impugned FIR because everything happened at Panchkula and thus the FIR needed to be quashed on the ground of territorial jurisdiction. Plea also is that this FIR is a counter blast to the FIR lodged by his family and hence was required to be quashed qua him. The counsel would submit that the petitioner is staying separately at a distance of 200 K.M. from the matrimonial house of his brother and as such had no role to play as

alleged against him in the FIR.

Notice was issued and reply is filed. It is pleaded in the reply that the challan has already been presented and the case is now pending for framing of charges. Perhaps the charges could not be framed because of the interim directions issued by this Court. Plea is that the petitioner would be at liberty to raise all these pleas before the trial Court at the time of framing of charges and hence this petition, at this stage, is not maintainable. Contesting the plea of the petitioner, on the ground that he was staying far away, It is pointed out that the petitioner had been regularly visiting the matrimonial house on various occasions and on week ends. Other assertions made in the petition are also denied.

Reliance is placed on the case of **Lakhwinder Singh vs. State of Punjab 2000(4) RCR (Criminal) 104** to say that the filing of charge sheet in the Court does not in any manner affect the jurisdiction of the High Court to exercise inherent power under Section 482 Cr.P.C.. Further support is sought from this judgment to urge that FIR can be directed to be quashed if the allegations are general in nature and are vague. Counsel has also referred to **Rajpal Singh vs. State of Haryana 2000 (3) RCR (Crimininal) 135 and Shanti Devi vs. State of Haryana 1999 (2) RCR (Criminal) 382** in this regard, where the FIR was ordered to be quashed on the ground that allegations were vague and general in nature. Reference is also made to a case of **Y.Abraham Ajith vs. Inspector**

of Police, Chennai (SC) 2004(3) RCR (Criminal) 988, in support of his plea of territorial jurisdiction as raised in the petition.

I have heard learned counsel for the parties.

Challan in this case is presented. Though, that in itself, may not be a ground to decline exercise of jurisdiction under Section 482 Cr.P.C. but still it would be a matter of consideration that in all such cases, the petitioner would have remedy of raising all these please at the time of framing of charges. As can be made out in **Lakhwinder Singh's case (Supra),** the Court has mainly interfered even after presentation of challan, as it found that the allegation in that case was vague and general in nature. This does not appear to be the position in the present case. Here the complainant has made specific allegation against her husband and the petitioner and it is also disclosed that they all constitute joint family. The allegations of harassment are made against all including the petitioner. Perusal of the FIR would also show that the complainant has alleged that she was locked by all the accused persons in a room on 29.11.2003 on the ground that her father had failed to pay the agreed amount of Rs. One lac. Allegation further is that she was sent to Rohtak on 30.11.2003 to get this cash from her father as otherwise she was not to be allowed to stay in the matrimonial house. The father of the complainant had allegedly paid a sum of Rs. 50,000/- through his son. Thus keeping in view the nature of allegations made in the present FIR it cannot be said that the allegations against the

petitioner are vague or general in nature.

Moreover, Learned counsel for the petitioner would make reference to the documents on record Annexure P-8 to P-23 to say that the petitioner could not have been present at Panchkula on the dates of alleged incidents. This basically is a plea of alibi which is required to be established by leading evidence and cannot be accepted on the basis of documents annexed with the record. These documents would need to be proved before the trial Court for placing any reliance on these. The plea of jurisdiction raised by the petitionercan also not be accepted in this case. The demand of dowry, made through respondent No.2, was to her father who was asked to arrange money etc. As is noticed from the FIR, this demand obviously was made to the father of respondent No.2 while he was stationed at Rohtak. A part of cause of action for demand of dowry, as such, would arise at Rohtak. The ratio of law laid down in **Y.Abraham Ajith's case (Supra)** would not be attracted to the facts of the present case. That was a case of harassment of wife at a particular place whereafter she came to live at Chennai. No allegation of harassment was made at Chennai. In this background, it was held that Courts at Chennai would not have any jurisdiction. In the present case allegations are made not only of harassment but also of demand of dowry, cause of action for which partly arose at Rohtak. It is specifically alleged in the FIR that the petitioner was sent to Rohtak to get a sum of Rs.50,000/- which she brought from

her father stationed at Rohtak. “Cause of Action”is well understood. It would include all facts which are material to be proved to entitle one to succeed. It is taken to mean that particular act on the part of a party which gives another cause of complaint. Reference in this regard can be made to the observations of the Hon'ble Supreme Court in **Y.Abraham Ajith's case (Supra).** Applying these principles, a conclusion is inevitable that part of cause of action would arise at Rohtak as well. Accordingly it cannot be said that present FIR is to be quashed on the ground of lack of territorial jurisdiction at Rohtak. Even otherwise such a plea can more appropriately be raised before the trial Court it being a mixed question of fact and law. The plea of counter blast, as raised, basically would have to be established by leading evidence and cannot be accepted as pleaded to order quashing of the present FIR. No case for quashing of the FIR is made out. The present petition is accordingly dismissed.

(RANJIT SINGH)
JUDGE

May 16, 2007
anita